



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201206023

T:EP:RA:T2

Uniform Issue List: 408.03-00

NOV 18 2011

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Legend:

Taxpayer A

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IRA X

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IRA Y

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Bank A

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Bank B

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Employee Q

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Amount 1

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Amount 2

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Amount 3

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Account A

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Date 1

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Date 2

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Page 2

201206023

Dear \*\*\*:

This letter is in response to your request dated October 8, 2010, as supplemented by written correspondence dated December 19, 2010 and August 24, 2011, in which you request a waiver of the 60-day rollover period contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 86, represents that on Date 1 he went to Bank A and withdrew Amount 1 from IRA X and Amount 2 from IRA Y. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d) of the Code of Amount 3 from IRA X and IRA Y was due to financial institution error. Taxpayer A asserts that Amount 3 has not been used for any purpose.

Taxpayer A represents that he was the owner of IRA X and IRA Y, individual retirement arrangements maintained at Bank A on his behalf. Taxpayer A represents that on Date 1, he received distributions of Amount 1 from IRA X and Amount 2 from IRA Y with the intent of rolling over Amount 3, a portion of the sum of Amount 1 and Amount 2, into an IRA at another financial institution. Taxpayer A further represents that on Date 1, Employee Q of Bank A told him that he had 90 days to rollover Amount 1 and Amount 2 into another IRA. On Date 1, Taxpayer A deposited Amount 1 and Amount 2 into Account A, a savings account, at Bank B. On Date 2, within 90 days of Date 1, Taxpayer A went to Bank B to open a tax-qualified IRA and complete a rollover of Amount 3 into that IRA. A Bank B employee told Taxpayer A that he could not complete a rollover because he missed his 60-day rollover window. Taxpayer A represents that his failure to rollover Amount 3 into a tax-qualified IRA within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error committed by Employee Q of Bank A and his reliance on the mistaken advice of Employee Q of Bank A. Taxpayer A represents that Amount 3 has not been used for any purpose.

Based on the facts and representations, Taxpayer A requests a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 3.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if—

201206023

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under section 408(d)(3)(A) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I).

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Taxpayer A did not provide any documentation, other than his own statement, that supports the alleged financial institution error. Accordingly, Taxpayer A has not provided sufficient documentation to support a favorable ruling. Under the circumstances presented in this case, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount 3 from IRA X and IRA Y, and thus

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201206023

Page 4

Amount 3 will not be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code, because the 60-day rollover requirement was not satisfied.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, contact \*\*\* at ( ) . Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Donzell Littlejohn, Manager,  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

cc:

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